STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

Zoran Ujkic,

Plaintiff-Appellant,

vs. Case No. 2006-1628-AV

Donald Sherry,

Defendant-Appellee.

_____/

OPINION AND ORDER

Plaintiff appeals as of right from an April 6, 2006 Opinion and Order by the Honorable Walter A. Jakubowski, Jr. of the 37th District Court, granting Plaintiff a judgment of possession and damages of $7,510.00.

This matter arises out of a written lease agreement for real property located at 14463 E. 9 Mile Road, Warren Michigan. On March 16, 2006 Plaintiff filed a Complaint for Non-payment of Rent against Defendant, Donald Sherry. According to the lease agreement, Defendant was to pay Plaintiff $2,700 per month from January 6, 2006 to December 1, 2007. The lease agreement also contained an option to purchase the property at the end of the lease. Defendant paid Plaintiff $20,000 for consideration of the option to purchase the property.

At the hearing on March 29, 2006, Plaintiff requested possession of the property, and the entire lease amount of $33,210 pursuant to an acceleration clause contained in the lease agreement. The Defendant, appearing without counsel, explained to the trial court that the property was in an extreme state of disrepair and that he had to expend roughly $4,000 to get the property operational. The trial court reviewed the lease agreement and heard testimony from

Plaintiff's counsel and Defendant. The trial court issued a written Opinion and Order that granted Plaintiff a judgment of possession and damages of $7,510.00. The damages were to be deducted from the $20,000.00 paid by Defendant to Plaintiff for the option to purchase, leaving $12,490.00 to be paid to Defendant.

Plaintiff contends that the trial court erred by failing to enforce the acceleration clause contained in the written contract. Plaintiff contends that the trial court exceeded its authority by re-writing the contract. Defendant has failed to respond to Plaintiff's appeal.

The procedures for an appeal to the circuit court are provided for in MCR 7.101. On appeal, this Court reviews the findings of fact of a trial court under the clearly erroneous standard. *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed. *Id.* This Court affords great deference to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *Townsend v Brown Corp of Ionia, Inc,* 206 Mich App 257, 264; 521 NW2d 16 (1994). By contrast, this Court reviews conclusions of law de novo. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

The interpretation of a contract is a question of law that is reviewed by an appellate court de novo. *Klapp v United Ins Group Agency, Inc* 468 Mich 459; 663 NW2d 447 (2003). All rules of contract interpretation are subordinate to the cardinal rule that the Court must ascertain the parties' intent. *City of Grosse Pointe Part v Michigan Municipal Liability and Property Pool*, 473 Mich 188, 198; 702 NW2d 106 (2005). Each section in a contract is equally important. The words used are given their plain and ordinary meaning that would be evident to the reader of the

contract. *Wilkie v Auto-Owners Ins Co,* 469 Mich 41, 47; 664 NW2d 776 (2003). A contract must be construed so as to give effect to every word, clause, and phrase, and a construction should be avoided that would render any part of the contract surplusage or nugatory. *Klapp*, at 467.

In the case at hand, the lease agreement provides in pertinent part:

> 4. Term The term of the lease is from January 6, 2006 until December 1, 2007 at which time the lessee shall have an option to purchase the property on the terms as set forth herein . . .
>
> * * *
>
> 10. Option to Purchase . . . In the event of the breach of this agreement by either party, each party shall have all remedies available under Michigan law, including all equitable remedies . . .
>
> * * *
>
> 13. Lessee's Examination and Acceptance of Premises. . . Lessee takes the premises in its "AS-IS" condition . . .
>
> * * *
>
> 20. Lessee's Maintenance. . . Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and major mechanical systems.

The trial court's Opinion and Order does not specifically identify the legal principles applied to reach the decision in this matter. However, it is clear from the language used that the trial court found Plaintiff to have breached the contract based upon the extensive disrepair of the premises. The lease agreement clearly states that Plaintiff is responsible for the structure, *roof*, and mechanical systems. It is apparent to this Court that the trial court's finding that Plaintiff failed to provide Defendant with a sound structure, based upon the extensive problems, including a leaky roof, is supported by the evidence. Consequently, the trial court did not abuse its discretion in its findings. Since Plaintiff failed to complete his part of the bargain, despite the

"as-is" clause, his reliance upon the acceleration clause fails.

The trial court's opinion states that the "[p]rinciples of fairness dictate that Plaintiff should be compensated for damages suffered, but should not receive an unfair windfall under these circumstances." Opinion and Order, 3. This court agrees. The remedy for breach of a contract is to place the non-breaching party in as favorable a position as if the contract had been performed. *Corl v Huron Castings, Inc,* 450 Mich 620, 625; 544 NW2d 278 (1996). Accordingly, the goal in contract law is not to punish the breaching party, but to make the non-breaching party whole. *Id.*, at 625-626. The trial court's ruling was appropriate considering the lease agreement's proviso regarding equitable remedies.

Based upon the reasons set forth above, the trial court's decision is affirmed. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

IT IS SO ORDERED.

Dated: August 2, 2006

DONALD G. MILLER
Circuit Court Judge

CC: William S. Stern
Donald Sherry, In ProPer

DONALD G. MILLER
CIRCUIT JUDGE

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BY: _____ Court Clerk